

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

LARRY RHODES, SR.,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0486

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER


This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the plaintiff's motion for judgment on the pleadings, deny the defendant's motion for judgment on the pleadings, reverse the final decision of the Commissioner, remand the case for further consideration, and dismiss the matter from the court's docket.

Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge. The court **DENIES** the plaintiff's motion for judgment on the pleadings, **DENIES** the defendant's motion for judgment on the pleadings, **REVERSES** the final decision of the Commissioner, **REMANDS** this case for further proceedings consistent with the Magistrate Judge's findings and recommendation, and **DISMISSES** this action for the docket of the court.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented parties.

ENTER: August 15, 2005


A handwritten signature in cursive script, reading "Joseph R. Goodwin", is written over a solid horizontal line.

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE